IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1336 of 1979
With
Civil Application No.2870 of 1979
With
Civil Application No.561 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DARAPURA MILK PROCESSERS CO.OPSOCIETY

Versus

UNION OF INDIA

Appearance:
1. First Appeal No. 1336 of 1979
Mr.R.A.Mishra for appellant No.1
None is present for respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 28/11/2001

ORAL JUDGEMENT

1. The appellant original plaintiff has filed this Appeal and challenged the judgment and decree passed by the learned Joint Civil Judge, Senior Division, Vadodara dated 17.1.79 passed in Regular Civil Suit No.1303/77 wherein the learned trial Judge has, on scrutiny of the evidence led before him by the parties, dismissed the suit of the appellant-plaintiff with costs. It is unfortunate that the Appeal of 1979 is not disposed of till this date for about 20 years though as found from the record of the Civil Application filed by the appellant being Civil Application No.2870/1979 for stay, the court has, as per order dated 26.11.79, ordered that as the Appeal is fixed for final hearing on 3.12.79, the Civil Application may be put up alongwith Appeal for disposal and earlier, as per order dated 19.11.79 the Court has called for the record and proceedings from the trial court.

2. Mr.R.A.Mishra, learned advocate appearing on behalf of the appellant-plaintiff, has while arguing the matter, taken me through the judgment under challenge as well as the evidence led by the parties before the trial court as well as the documents found on the record. Mr.Mishra, the learned advocate, has vehemently urged that the point which this court has to consider while deciding the Appeal is that whether the telephone authorities were right in disconnecting the connection of the plaintiff without giving notice. It is the case of the plaintiff that the telephone department has issued bill to the plaintiff for the month of July for a sum of Rs.29.50 Ps. dated 2.8.76, which was posted and received by the plaintiff on 19.8.76, for which the plaintiff had made payment on 31.8.76 within the time prescribed and once the plaintiff has paid the amount of bill within 15 days from the receipt of the said bill, the Department has no business to disconnect the telephone connection. It is also his contention that even while disconnecting the telephone connection, it is the duty of the department to give advance notice and in the present case the department has not issued any notice and thereby the principle of natural justice is violated and the trial court has wrongly dismissed the suit. Accordingly he prayed that the judgment and order of the trial court be set aside.

3. While deciding this Appeal, this Court has to consider whether the learned trial Judge, while dismissing the suit, has properly appreciated the oral as well as documentary evidence or not. Accordingly I have gone through the pleadings as well as the evidence. It is an admitted position that the Telephone Department has

disconnected the telephone connection of the plaintiff Society on 30.8.76 and it is the case of the Department that as the bill for sum of Rs.29.76 Ps. dated 2.8.76 was not paid within the stipulated time, as per rule the telephone connection was disconnected. As found from the plaint, the plaintiff has sought for injunction against the defendant and also sought relief for restoring the telephone connection with the plaintiff Society. It is the case of the plaintiff that the Department has ignored the fact that the bill for Rs.29.50 Ps., which was posted and received by the plaintiff on 19.8.76, was paid on 31.8.76 and it is the case of the plaintiff that as the payment is made within the stipulated time after the bill was received, the department has no authority to disconnect the telephone connection. The Suit was filed on 13.12.77. The plaintiff has prayed in the suit that the Indian Posts and Telegraph Department may be ordered to reconnect the plaintiff's telephone connection 383 Padra and also prayed that the costs be awarded due to loss incurred by the plaintiff by quantifying at Rs.25/--.

4. The plaintiff is the Co-operative Society and it is an incorporated body under the Guajrat Co-operative Societies Act and its Registration Number is D/98. The Society is having Telephone connection No.PDR/383. It is the case of the plaintiff that the Society was paying bills received from the Department regularly. In respect of the bill for Rs.6.75 Ps. issued on 31.1.76, the same was not received by the plaintiff and bill of Rs.29.50 Ps., issued on 2.8.76, was received by the plaintiff on 19.8.76 for which the payment was made on 31.8.76 and obtained receipt issued by the Postal Authority of Padra Post Office. Consequent bills received were also paid and it is the case of the plaintiff that the Department has sent usual notice for Rs.6.75 Ps. that if the Society did not pay that bill, its telephone connection will be liable to be disconnected. Further attempts were made to inquire as the telephone of the Society was not working and general excuses were given by persons from the Department and ultimately a letter was issued inquiring for the reason for disconnection of the telephone and it was replied that the bill for Rs.6.75 Ps. dated 31.1.76 and bill for Rs.29.50 Ps. dated 2.8.76 are not paid and accordingly telephone connection of the plaintiff was disconnected on 30.8.76. It is the case of the plaintiff that the Department has no such authority to disconnect the telephone as the Society has paid the outstanding bill, which was received on 19.8.76 and also paid immediately within 15 days. The plaintiff has also filed Application for mandatory injunction for

seeking relief of restoration of telephone, which was disconnected by the authority.

5. As found from the record, on behalf of the defendant a reply Exh.10 was submitted in reply to the Application for mandatory injunction sought for by the plaintiff. The defendant has denied the case put forward by the plaintiff and it is the say of the Department that the Department issued bill in favour of the Society for June-July period for Rs.29.50 Ps. on 2.8.76 and the plaintiff was required to make payment of the said bill within 15 days from the date of the issue as per the Departmental Rules and the plaintiff has not paid the said bill within 15 days as per the rules and accordingly the telephone connection of the plaintiff was disconnected on 30.8.76 and it is only after the disconnection of the telephone that the plaintiff had paid the bill for Rs.29.50 Ps. on 31.8.76 and even the plaintiff has not applied for reconnection of the telephone line as late as on 13.11.77. It is the case of the Department that the notice issued by the plaintiff through the advocate was replied and it was stated that the plaintiff has not applied for reconnection of the telephone by paying reconnection charges and the reconnection can be made by paying requisite charges as per Rule. Rest of the case of the plaintiff was denied and prayed for dismissal of the Application. It is further found from the record that defendant had filed Written Statement to the plaint which is at Exh.26 and in the said reply, the case put forward by the plaintiff was denied and in the similar way, in paragraph 11, the Department has contended that the plaintiff has not paid the bill for the month of June and July of Rs.29.50 Ps. The bill was issued on 2.8.76, which was payable within 15 days as per Rule. However, the same was not paid and accordingly the Department has disconnected the telephone connection of the plaintiff on 30.8.76 as per Rule and the payment made by the plaintiff for the said bill is admittedly after disconnection of the telephone of the plaintiff and further that the plaintiff had not applied for reconnection of the telephone and prayed for dismissal of the Suit. One of the point, which was also taken, is that in absence of any statutory notice under Section 80 of the C.P.C., the Suit is required to be dismissed.

6. In support of the case of the plaintiff, the plaintiff has deposed at Exh.16 that he is working as a President of the plaintiff Co-operative Society. Society has received the bill for Rs.29.50 Ps. dated 2.8.76. The said bill is at Exh.17. He has further deposed that

the Society had made payment of the said bill on 31.8.76 and inspite of making payment, his telephone connection bearing No.383 Padra was disconnected. Exh.17, which is relied upon by the plaintiff, is the bill for the month of June-July 1976 of telephone No.PDR/383. The bill is dated 2.8.76. On the reverse of the said bill there is a postal stamp dated 19.8.76 intimating the consumer that the payment to be made before 17.8.76 by putting a rubber stamp. Relying upon document Exh.17, it is the case of the plaintiff that bill Exh.17 dated 2.8.76 was received only on 19.8.76 by the plaintiff and the payment was made on 31.8.76 within the stipulated time and accordingly it is the case of the plaintiff that disconnection of the telephone of the Society was not proper and legal. In cross-examination of the plaintiff, he has denied the suggestion that the bill dated 2.8.76 was received by him on 6.8.76 and further that there was no other documentary evidence except which was found on the bill Exh.17 on the back side of the bill where the postal stamp dated 19.8.76 is there. Further in cross examination he has deposed that there is no other evidence to show that he has received the bill Exh.17 dated 2.8.76 on 19.8.76. Exh.29 is the duplicate copy of the said bill and in the said bill there is a postal stamp dated 6.8.76.The plaintiff has also admitted that until 13.11.77 he has not applied for reconnection.

7. On behalf of Defendants, one Shri Jagathrayan Tribovandas Misra was examined at Exh.33, who deposed that he is working as Accountant with Defendant No.2, namely, Divisional Engineer, Indian Post and Telegraph Department, Pratap Road, Dandia Bazar, Baroda. He deposed that the bill for the month of June - July for Rs.29.50 Ps. was sent to the plaintiff on 2.8.76. While explaining the procedure in the Department, he deposed that as per practice, the Department prepares 3 copies of bill and 2 copies were sent to the consumer. The consumer can make payment of the bill by making payment to the postal authority. He further deposed that Exh.17 and Exh.29 are the duplicate bills, which were sent to the plaintiff. In view of the above, both the bills were received by the plaintiff. On the bill Exh.17 relied upon by the plaintiff, there is postal stamp of Makarpura, GIDC Post Office and the plaintiff is required to make payment within 15 days as per rule. In the duplicate, which was also produced by the department, there is a postal rubber stamp dated 2.8.76 of Darapura Post Office. It is not in dispute that the plaintiff has made payment for Rs.29.50 Ps. on 31.8.76. Considering the bill, which was issued in favour of the plaintiff on 2.8.76, the plaintiff was to make payment on or before

17.8.76. As found from the evidence, the plaintiff has made payment of the bill for Rs.29.50 Ps. on 31.8.76. Admittedly payment was made late and as per Rule, Department has authority to disconnect the telephone connection. It is not possible for me to accept the contention of Mr. Mishra that the Department has to give notice before disconnecting the telephone connection. Once the bill is received, in the said bill consumer is intimated that he should make payment on or before a particular date. In the present case, it is also found from the evidence of defence witness No.1 that duplicate bills were issued to the consumer and the payment was to be made by the consumer on or before 17.8.76. The plaintiff had a notice in advance that he is liable to make payment before 17.8.76. Further it is found from the evidence that even the plaintiff has not applied for reconnection of the telephone. I am of the view that no notice was required to be issued by the Department calling upon the consumer to make payment. There is no question of any violation of principles of natural justice. In fact, it is not possible for me to accept the case put forward by the plaintiff that bill dated 2.8.76, issued by the Department, was received on 19.8.76 and, thereafter, he has made the payment within 15 days, namely, on 31.8.76. Even in the Bill Exh.17, which, according to the plaintiff he has received on 19.8.76, on the back side of the bill, the plaintiff was intimated that the payment is to be made on or before 17.8.76 and even if we consider that the plaintiff has received the bill on 19.8.76, he is not supposed to wait till 31.8.76. I am not accepting the contention of Mr. Mishra that the Department is required to issue notice before disconnection of the telephone and further that the bill dated 2.8.76 was received by the plaintiff on 19.8.76 and the plaintiff has made payment thereafter within 15 days on 31.8.76. Therefore, it is difficult for me to reverse the finding recorded by the learned trial Judge, which is based on evidence and even according the the plaintiff he has admitted in his evidence that there is no other proof to show that he has received the bill dated 2.8.76 on 19.8.76.

8. As regards the finding given by the learned trial Judge on the point of issue regarding the Suit is barred by reason of want of statutory notice, by holding that the statutory notice as provided under Section 80 of the C.P.C. is not issued to the Union of India, it is found from the record that the Defendants have contested the Suit by filing written statement wherein the contention was raised that the Suit is bad for want of any statutory notice issued by the plaintiff. I am not dealing with

the said contention, in view of the fact that this Court has on examining the evidence, on facts, confirmed the finding recorded by the learned trial Judge that the plaintiff has failed to make payment within the stipulated time in view of the bill issued on 2.8.76, wherein on the back side of the bill the plaintiff was asked to pay the bill within stipulated time by mentioning the date. Even the notice Exh.21 issued by the plaintiff to the Divisional Engineer (Telephones), Indian Post and Telegraph Department is a notice in compliance of the statutory provisions as per Section 80 of the C.P.C.

Accordingly the Appeal is dismissed. The judgment and decree passed by the learned trial Judge dismissing the suit of the plaintiff is confirmed. However, considering the facts of the case, I pass no order as to costs.

Civil Application for stay, which was ordered to be heard with the main Appeal, being Civil Application No.2870/79, wherein the appellant has prayed for relief of restoring the telephone connection No.383 Padra, also does not survive. Accordingly Civil Application is disposed of. Rule is discharged. However, there will be no order as to costs.

In view of the fact that the main Appeal is notified for final hearing after 21 years, Mr. Mishra, learned advocate for the appellant, has not pressed this Application as in this Application, the appellant plaintiff has prayed for amendment of the plaint. Civil Application No.561/80 is accordingly disposed of with no order as to costs.

Dt:28.11.2001 (D.K.Trivedi,J)

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